

Editor's note: Overruled to the extent inconsistent with Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (Feb. 24, 1984).

SHAW RESOURCES, INC.

IBLA 83-431

Decided June 7, 1983

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application, W-83698.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Where an automated simultaneous oil and gas lease application Part B, form 3112-6a (June 1981), does not reflect in the space designated "MARK SOCIAL SECURITY NUMBER" the same identification number selected or assigned in Part A, form 3112-6 (June 1981), it is not properly completed and must be rejected.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing

Filing fees will be retained for simultaneous oil and gas lease applications which are rejected.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Shaw Resources, Inc., appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 28, 1983, rejecting simultaneous oil and gas lease application, W-83698, for failure to properly complete the application, automated form 3112-6a.

Appellant submitted an automated simultaneous oil and gas lease application for parcel WY-359 of the November 1982 drawing. The application was selected with first priority. Part B of the application, form 3112-6a (June 1981), included a section designated "MARK SOCIAL SECURITY NUMBER."

The number used in Part B of appellant's application (884087730) did not match the number appearing in the "SOCIAL SECURITY NUMBER" section of Part A of the application (840857730). BLM cited 43 CFR 3112.2-1(g), and 3112.6-1(a), as controlling and rejected the application as improperly completed. BLM also made reference to Instruction Memorandum No. 82-193, dated January 8, 1982, which states in part "no Part B [form 3112-6a] will be accepted unless * * * it has a correctly completed (darkened circle) social security number, employer identification number of Bureau of Land Management application (BAN) number."

Appellant admits that transposition of the identification number to Part B resulted in an erroneous reference, but argues that there is no regulatory requirement whereby an oil and gas lease applicant must supply such a tax related identification number. It contends that, as Part A was correct, all information necessary for application "should be treated as though set out in full."

[1] We observe generally that under the Mineral Leasing Act, the Department is authorized to issue a noncompetitive oil and gas lease only to the first-qualified applicant. See Udall v. Tallman, 380 U.S. 1 (1965); 30 U.S.C. § 226(c) (1976). The Department has promulgated regulations which provide for the simultaneous filing of applications to be drawn for priority of consideration. 43 CFR Subpart 3112. "If the Secretary is to fulfill his obligation to lease to the first-qualified applicant, as strict a compliance with the regulations as possible is necessary." Shearn v. Andrus, No. 77-1228, slip op. at 6 (10th Cir. Sept. 19, 1977), quoted in Sorensen v. Andrus, 456 F. Supp. 499, 502 (D. Wyo. 1978).

The Board has consistently held that failure to properly complete the information required on a simultaneous oil and gas lease application renders the filing defective and requires rejection of the offer under 30 U.S.C. § 226(c) (1976). H. L. McCarroll, 55 IBLA 215, 216 (1981). The current regulations provide that an application consists of an approved form "completed, signed and filed pursuant to the regulations in this subpart" and that the "properly completed and signed lease application be filed in the proper office of the Bureau of Land Management." (Emphasis added.) 43 CFR 3112.2-1(a) and (g). The proper completion of a lease application is a mandatory requirement and failure to properly complete such an application must result in rejection of the application. 43 CFR 3112.6-1(a); Nancy Y. Otani, 58 IBLA 38 (1981).

Beginning on January 1, 1982, the form approved by the Director, BLM, for use in the Wyoming State Office is the automated simultaneous oil and gas lease application form 3112-6 and 3112-6a. 43 FR 5573 (Nov. 12, 1981). A simultaneous oil and gas lease application is required under 43 CFR 3112.2-1. This application must be filed on a form approved by the Director, BLM. The automated form, which is machine readable, is designed to accommodate the automated processing of simultaneous oil and gas lease applications. The development of the automated process is a result of BLM's efforts to expedite the issuance of leases and lessen the paperwork burden. 46 FR 55783, 55784 (Nov. 12, 1981).

The application form consists of two parts, A and B. Part A, which should be submitted only with the applicant's first filing under the automated process, enables BLM to record the applicant's name and address. Part B identifies all parcels which the applicant desires to lease and a separate Part B is submitted for each drawing. The identification number appearing on both parts is the coordinating feature between them. Although the number is designated "SOCIAL SECURITY NUMBER" on the form, it may be a person's social security number, a business entity's employer identification number, or a number assigned by BLM. The number entered on Part A is coordinated with all subsequently filed Parts B.

The Board previously considered the use of tax related identifying numbers as a compulsory feature of the simultaneous application form in Harry Reich, 27 IBLA 123, 83 I.D. 507 (1976). The drawing card, form 3112-1 (May 1974), provided a space for designating the applicant's social security or taxpayer number. The Board determined that section 7 of the Privacy Act, 5 U.S.C. note following § 552a (1976), dealt specifically with requirements for persons to furnish social security numbers to a Government agency, and that use of the numbers in that situation did not comply with subsection (b) of section 7 of the Privacy Act, pertaining to notice concerning the request, the authority for making the request, and the use to be made of the number. Harry Reich, supra at 125-26, 83 I.D. at 508-09.

The employer's identification number, by which appellant distinguished itself on its application, is issued to identify the employer on employer records and in certain tax claims presented before the Department of the Treasury. See 26 CFR 31.6011(b)-1(d). However, use of the number on the automated form 3112-6 is discretionary with the applicant. Part A instructions provide: "If an applicant has no SSN or EIN or does not wish to disclose such a number, leave the Social Security Number block blank. BLM will assign an applicant number which must be used for all future filings." A notice appearing on both Part A and Part B reads, "The Paperwork Reduction Act of 1980 (44 U.S.C. 35) requires us to inform you that: This information is being collected to enter this application in an automated drawing. This information will be used to establish priority. The obligation to respond is required to obtain a benefit." Thus, unlike the circumstances presented in Reich, disclosure of a tax related identification number on form 3112-6 is not mandatory and the nature of its use has been revealed. 1/

Despite the voluntary nature in using the employer identification number, all Part B filings must correspond with a Part A filing on record. Part B instructions direct the applicant to "print in the appropriate squares the number used by the applicant on Part A." That number is the feature which, when processed by machine, will distinguish the application as distinctly that of the applicant. Without using the same number as used in

1/ Moreover, the authority considered in Reich, section 7 of the Privacy Act, specifically denotes disclosure of an individual's social security number and does not reference its applicability to other assigned tax related identification numbers.

Part A, Part B cannot be efficiently processed. The rule requiring proper completion of the approved application form promotes the efficient administration of the simultaneous oil and gas leasing program in view of the number of applications submitted. James M. Chudrow, 68 IBLA 377 (1982).

Although failure to correctly state the applicant's identification number is not expressly included among the defects listed in 43 CFR 3112.2, that omission does not preclude the rejection of the application. 43 CFR 3112.6-1(a) clearly provides that an application will be rejected if not filed in accordance with section 3112.2. 43 CFR 3112.2-1(g) requires that applications be "properly completed." When dealing with the Government, a person is presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 322 U.S. 380 (1947). Appellant was on notice that the approved form, 3112-6a, must be properly completed. We cannot condone a departure from an otherwise consistent policy of rejecting applications that do not conform to the Department's regulations. A "qualified applicant" is not merely one who is qualified to hold an oil and gas lease. A "qualified applicant" must also have completed and filed a valid application. Fen F. Tzeng, 68 IBLA 381, 386 (1982).

[2] Appellant asserts that its filing fee should be returned in the event its application is rejected. It contends that BLM applied a Federal Register notice dated November 18, 1982, and not published until November 26, 1982, whereas the application was filed on November 13, 1982. However, it has long been provided that filing fees are not returnable in such circumstances. 43 CFR 3112.6-1 reads: "Rejection is an adjudicatory process which follows selection. Filing fees for rejected filings are the property of the United States and cannot be returned." Appellant's erroneous identification number was not apparent on the face of the Part B filing. The application was thereby included in the drawing process. Rejection of the application occurred after the appellant's application was processed. The processing for which the filing fees were assessed had been completed. Retention of the filing fee is consistent with both the spirit and the letter of the law. Albert E. Mitchell, III, 20 IBLA 302 (1975).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Gail M. Frazier
Administrative Judge

